

1           A     Yes, sir.

2           Q     My question is do you have a specific recollection  
3 as we sit here today of making these calculations at the time  
4 you prepared your November 7th letter?

5           A     Yes.

6           Q     Why is it that you arrived at a \$1.86 discrepancy  
7 between this tabulation and the amount set forth in your  
8 November 7th letter for legal fees?

9           A     Well, I assume it was just a mathematical error  
10 probably in computing the expenses.

11          Q     Would any -- you indicated in your testimony that  
12 one of the reasons why you believed that this tabulation is  
13 accurate is because of the small discrepancy. Would a larger  
14 discrepancy have concerned you in any way?

15          A     Well, no. We were just pointing out that -- I'm  
16 sure it's correct as to the fees and we had to pro rate some  
17 of the expense items and I must have been off a little bit on  
18 my math one time or another.

19          Q     Would a larger discrepancy have caused you to  
20 question whether the tabulation was an accurate reflection of  
21 what you did when you prepared the November 7th letter?

22          A     Well, I -- it didn't come up. I mean, there wasn't  
23 a larger discrepancy. This was it.

24          Q     If you had seen a larger discrepancy would that have  
25 caused you to question --

1 JUDGE CHACHKIN: How can he speculate about what  
2 would have happened if it didn't happen? I mean, we're  
3 roaming -- we're dealing in a roaming fantasy.

4 MR. HOLT: Your Honor, he's indicated that the basis  
5 for why he believed this was accurate was because there was  
6 such a small discrepancy and I'm wondering whether a larger  
7 discrepancy would have caused him to question the accuracy of  
8 these, these figures.

9 MR. BECHTEL: I object. It's irrelevant.

10 JUDGE CHACHKIN: Sustained.

11 BY MR. HOLT:

12 Q Mr. Berfield, I take it that your use of the term  
13 "reconstruction" means that the calculations reflect what you  
14 think you might have done at the time rather than what you  
15 actually recall doing?

16 A No, what I did at the time.

17 Q Was this tabulation actually prepared by you?

18 A Yes.

19 Q Could you describe the process by which the  
20 tabulation was prepared?

21 A The same way I did it the first time.

22 Q Well, could you describe that process?

23 A Sure. I reviewed the, reviewed the invoices and  
24 time sheets as necessary, and spoke to Schauble and Mr. Cohen  
25 and wrote down the amounts.

1 Q Were you assisted by anyone in preparing the  
2 tabulation?

3 A No. I did, I did the basic tabulation and I gave it  
4 to my attorney, Mr. Bechtel.

5 Q When you were making your calculations reflecting in  
6 this tabulation did you reach any figures different from those  
7 provided here?

8 A No. These are the numbers.

9 Q So these -- in the first instance when you prepared  
10 this tabulation you made no revisions to any of the figures  
11 reflected in the tabulation? These are the numbers you came  
12 up with the first time?

13 A I believe that's correct, yes.

14 Q I'd like to direct your attention to a document  
15 that's been marked for identification as TBF Exhibit 279.

16 A Which volume is that in?

17 Q That's in the, the hearing exhibits that Trinity  
18 exchanged.

19 JUDGE CHACHKIN: They're the ones that have been  
20 marked for identification but not received, not offered.

21 WITNESS: And what's the date, sir?

22 BY MR. HOLT:

23 Q It's TBF Exhibit 279.

24 A Thank you.

25 Q That was provided to us at the start of your

1 deposition on -- in March of 1994 and with the exception of  
2 the caption it's identical to the documents that's provided  
3 with your written testimony. This document indicates that --  
4 it has a notation which indicates that it was prepared by Gene  
5 Bechtel and my question is what role, if any, did you have in  
6 preparing this tabulation?

7 A Well, this is the same as the later. What I did is  
8 I -- on a piece of yellow paper I went back and did, did the  
9 tabulation and did a little math on the pro rata expenses and  
10 gave it to Mr. Bechtel and he headed it up and cleaned it up  
11 and put it in this form. I think he told me he had to correct  
12 one of my math errors on one of the, one of the expense items.

13 Q Do you recall which expense item that was?

14 A No.

15 Q Well, you indicated that you -- that the figure  
16 reflected here was the same figure that you arrived at when  
17 you prepared your calculation, that you made no revision, and  
18 now I'm curious to know which expense figure was revised.

19 A I don't, I don't even know. I just -- where there  
20 were expenses like it had to be 28 percent of a number, I just  
21 put a number down and --

22 Q And that figure was revised by Mr. Bechtel?

23 A I think he mentioned that I might have made one  
24 slight mathematical error in one. I'm not sure.

25 Q Well, let's take a look at this tabulation. Can you

1 refer to it and identify for me which expense was revised?

2 A No. He said it was a minor thing.

3 Q Did he indicate -- was it indicated that it was a  
4 change in the percentage of the tabulation or one of the --

5 A Just mathematical calculation.

6 Q Correct. I'm asking you whether it was a  
7 mathematical calculation that caused you to arrive at a  
8 percentage or a dollar figure?

9 A I don't have -- he was, he was joking about it and I  
10 said, "Sometimes my math isn't too great." I think he -- I  
11 thought I heard him say yeah, he went over it and while the  
12 percentages were accurate, on the expenses the dollar figures  
13 came out slightly different on one. I don't know.

14 Q How did Mr. Bechtel know what error you had made?

15 A Well, it was a mathematical error. In other words,  
16 if it's 28 percent of \$138 should be \$26 and I'd written  
17 \$25.38 or something that was it.

18 Q Well, you indicated earlier that there was a change  
19 in a percentage?

20 A No.

21 MR. BECHTEL: He did not and that's argumentative.

22 MR. HOLT: I believe that that was his testimony.

23 WITNESS: No.

24 MR. BECHTEL: That's a misleading question, a  
25 misleading, argumentative question that misconstrues what he

1 | said.

2 |           JUDGE CHACHKIN: What difference does it make? They  
3 | look almost identical, the figures here. I thought we were --  
4 | the whole issue was concerned allocation, not what the  
5 | specific numbers. I thought there was no question about the  
6 | numbers.

7 |           MR. HOLT: Well, Your Honor, this tabulation  
8 | purports to identify how he arrived at the figure in the  
9 | November 7, 1991 letter which served as the basis for the  
10 | allocations that he made, and so I'm -- and he's provided  
11 | extensive testimony about how he made -- how he prepared the  
12 | November 7th letter and I'm seeking to determine whether any  
13 | of these figures were revised in any way at any time prior to  
14 | the preparation of this document.

15 |           JUDGE CHACHKIN: I still think it's a waste of time.  
16 | We're interested in the allocation, whether it was a proper  
17 | allocation made. Whether it was off a couple of pennies or  
18 | not is irrelevant to the question of the allocation. I mean,  
19 | he's gone through the process of how he arrived at his figures  
20 | on which he based his allocation but, still, the -- I thought  
21 | our main concern was whether he properly allocated the figures  
22 | or not between the five permits.

23 |           MR. HOLT: Yes, Your Honor. Thank you. I'd like to  
24 | direct your attention to pages 79, 80, 110 and 111 of your  
25 | testimony. Well, before I begin my questions, Your Honor --

1 JUDGE CHACHKIN: This is what page you want now?

2 MR. HOLT: Well, before I begin this line of  
3 questioning I would move TBF Exhibit 292 into evidence.

4 JUDGE CHACHKIN: Any objection to 292?

5 MR. BECHTEL: No, sir. We support the entry of  
6 that.

7 JUDGE CHACHKIN: All right. TBF Exhibit 292 is  
8 received.

9 (The document that was previously  
10 marked for identification as TBF  
11 Exhibit No. 292 was received into  
12 evidence.)

13 MR. HOLT: And I would also at the same time offer  
14 Exhibit 279 into evidence.

15 JUDGE CHACHKIN: Any objection? Let me turn to it.  
16 297 is what, the -- that's the aid to understanding.

17 MR. BECHTEL: What's the purpose of the offer is my  
18 main question.

19 MR. HOLT: The purpose of the offer is to establish  
20 that, that the draft was prepared by Gene Bechtel.

21 JUDGE CHACHKIN: How is that an aid to understanding  
22 Mr. Berfield's testimony, the fact that this particular draft  
23 was prepared by Gene Bechtel? I don't quite understand it. I  
24 mean, I thought aid to understanding would show there's some  
25 kind of breakdown necessary with the computations made which

1 explained the exhibit, but this seems to me an exact duplicate  
2 of the exhibit, my quick looking at it.

3 MR. BECHTEL: Yeah. I object to its receipt into  
4 evidence. I don't think --

5 JUDGE CHACHKIN: I don't understand what purpose it  
6 serves.

7 MR. HOLT: Your Honor, I offered it for the purpose  
8 of establishing that it was prepared by Gene Bechtel in a  
9 delayed copy.

10 JUDGE CHACHKIN: What was prepared by Gene Bechtel?

11 MR. HOLT: The tabulation was prepared by Gene  
12 Bechtel.

13 JUDGE CHACHKIN: Which tabulation? Mr., Mr.  
14 Berfield says he prepared the tabulation which is the exhibit  
15 of Glendale's.

16 MR. HOLT: It's part of the process that was, that  
17 was followed in order to arrive at the figures. Mr. Berfield  
18 says that he wrote it. He then provided it to Mr. Bechtel and  
19 this is the end result, which is what we received, and then  
20 you compare it with what ultimately was placed into the record  
21 which doesn't bear the notation that it was prepared by Mr.  
22 Bechtel and we believe that they're relevant.

23 JUDGE CHACHKIN: But if all Mr. Bechtel did was  
24 review the figures and check for the possible mathematical  
25 error but he didn't change it, didn't prepare it, didn't have



1 anything to do with the substance of it, then what difference  
2 does it make whether he looked it over? I mean, counsel  
3 looked over a statement prepared by somebody else. It doesn't  
4 mean it's prepared by counsel. I mean, normally I assume a  
5 counselor reviews a client's statement and if he finds an  
6 error in it or maybe a misspelling and changes it, does that  
7 mean it's not prepared by counsel? I mean, that's quite a  
8 jump it seems to me to say it was prepared by Mr. Bechtel when  
9 all he apparently did was review it and see if there was any  
10 mistakes made in the arithmetic.

11 MR. HOLT: That's precisely my point, Your Honor.  
12 That's why I'm -- was wondering why the document reflects that  
13 it was prepared by Bechtel instead of Mr. Berfield. This is  
14 the document that we provided in order to examine Mr. Berfield  
15 at his deposition. It indicates it was prepared by Mr.  
16 Bechtel.

17 MR. BECHTEL: No, Judge. This document in the form  
18 we see it, Exhibit 279 of Trinity, was presented to the  
19 parties at the deposition by Mr. Berfield and it says  
20 "Prepared by Gene Bechtel." Now we've had the testimony of  
21 Mr. Berfield which says that he on a yellow sheet of paper did  
22 the substantive work which was then reviewed and spruced up or  
23 cleaned up or whatever phrase he used by me and he correctly  
24 indicates that I found a very small arithmetic error. Now you  
25 have that in the record. So to continue to talk about this

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1 being prepared by Gene Bechtel as though that's a substantive  
2 matter warranting the admission of this exhibit is wrong and  
3 the record doesn't reflect that. I don't think it's relevant.  
4 I think if it's received into evidence we're going to, we're  
5 going to read proposed findings that are strange and I object  
6 to its receipt.

7 JUDGE CHACHKIN: I'm not going to receive it. We,  
8 we have that explanation from Mr. Berfield as to what  
9 assistance Mr. Bechtel provided in connection with the exhibit  
10 which is the Glendale exhibit and we don't need another copy  
11 of the same exhibit in evidence, so I'm not going to receive  
12 TBF Exhibit 279.

13 (The document that was previously  
14 marked for identification as TBF  
15 Exhibit No. 279 was rejected.)

16 JUDGE CHACHKIN: Let's take a ten minute break.

17 (Off the record at 11:50 a.m. Back on the record at  
18 12:00 p.m.)

19 JUDGE CHACHKIN: Back on the record. Mr. Holt?

20 MR. HOLT: Mr. Berfield, I'd like to direct your  
21 attention to pages 79, 80, 110 and 111 of your testimony.  
22 Specifically I'd like you to look at the top right-hand corner  
23 of those pages.

24 JUDGE CHACHKIN: Page 79 is the -- Dr. Hoover.

25 BY MR. HOLT:

1 Q 79, 80, 110 and 111. If you'll look at the upper  
2 right-hand corner of those you'll see a stamp indicating that  
3 they had been received by Cohen & Berfield on a particular  
4 day? Correct?

5 A Yes, sir.

6 Q I take it that these documents were maintained in  
7 Cohen & Berfield's files?

8 A I believe so, yes.

9 Q And in the upper right-hand corner of all four  
10 documents you see a handwritten notation, R-6-IF? Correct?

11 A Yes.

12 Q And I'll represent to you that your written  
13 testimony includes ten other documents that bear that same  
14 designation. Those documents can be found on pages 16, 27,  
15 47, 48, 76, 83, 86, 90, 91 and 108 of your testimony. It's  
16 not necessary for you to go through them. I just wanted to  
17 identify them for the record. Do you recognize that notation  
18 at the top right-hand corner as the handwriting of John  
19 Schauble?

20 A I think so.

21 Q And one of Mr. Schauble's responsibilities at the  
22 time was to mark documents for filing in the appropriate  
23 client file at Cohen & Berfield? Correct?

24 A Correct.

25 Q And the R in R-6-IF stands for Raystay? Isn't that

1 right?

2 A That's right.

3 Q I'd like to direct your attention to a series of  
4 Cohen & Berfield invoices found on pages 19 through 25 of your  
5 direct testimony. If you'll look in the upper right-hand  
6 corner of those, they all bear the designation R-6-IG. I take  
7 it that those invoices were marked by John Schauble for filing  
8 in Raystay's files. Correct?

9 A I believe so.

10 Q I'd like to direct your attention to the invoices of  
11 April 4th and May 1st. Both are directed to George Gardner  
12 and both --

13 A I'm sorry. What page is it on?

14 Q I'm sorry. It's on pages 17 and also you'll have to  
15 refer to the document that's been received into evidence as  
16 TBF Exhibit 292 for the May 1st invoice. That's page 4.

17 A I'm sorry. Of which exhibit?

18 Q 292.

19 A Page?

20 Q Page 4.

21 A Yes.

22 Q Do you have those documents before you? And they  
23 are both directed to George Gardner bearing reference to  
24 Adwave Company, do they not?

25 A Yes. They say "Re: Adwave Company."

1 Q And at the time of these invoices Cohen & Berfield  
2 served as FCC counsel to Adwave, didn't they?

3 A Well, Adwave was our client and one of the RKO  
4 cases, I think the Ft. Lauderdale case, and the case may have  
5 been over by this time. I'm not sure.

6 Q But the firm represented Adwave at the time, did it  
7 not?

8 A We did represent Adwave. That's correct. That was  
9 Mr. George Gardner.

10 Q Yeah. Mr. Gardner was the President and sole  
11 shareholder of Adwave, wasn't he?

12 A I believe that's correct.

13 Q Now, you see in the upper right-hand corner of these  
14 documents they bear the notation "A-2-1-A." In fact, if you  
15 look at the May 1st invoice, 1990, it looks like the  
16 designation R-6-IG has been stricken and replaced by A-2-1-A.  
17 Isn't that right?

18 A Well, something's been stricken.

19 Q Can you take a look at what's been stricken and, and  
20 read that for me, if you can?

21 A I can't make it out for sure.

22 Q Can you make out the R?

23 A It looks like an R, but --

24 Q And would you agree that the end looks like an IG?

25 A It seems to resemble that.

1 Q Now, the A in that designation stood for Adwave,  
2 didn't it?

3 A I assume so. I don't remember. We have a filing  
4 system and I suppose Adwave would be under the A. I don't  
5 recall whether it was A-2 or A-3 or whatever.

6 Q And if you refer to TBF Exhibit 283 for  
7 identification, which is in the volume of exhibits that I  
8 provided you this morning, you'll see that Adwave paid both of  
9 the invoices dated May 1, 1990 and April 4, 1990. Isn't that  
10 right?

11 A Well, I see a check from Adwave here in the amount  
12 of \$4,106.14.

13 Q And does that amount match the amount down --  
14 cumulative total bill on May 1, 1990? That's page 4 of TBF  
15 Exhibit 292.

16 A It does.

17 Q So it was apparent from the face of the April and  
18 May invoices that those bills had been directed to Adwave, was  
19 it not?

20 A No. No. The bills were sent to Raystay.

21 Q Well, there's -- the notation in the upper right-  
22 hand corner which bears a reference to Adwave made it possible  
23 for you to determine at the time that you were reviewing the  
24 November -- reviewing these invoices in preparation of your  
25 November 7th letter that they had been billed to Adwave?

1 Correct?

2 A No. No. You misunderstand. These are -- these  
3 bills were sent to Raystay. These were services provided in  
4 accordance with -- as part of the prosecution of Raystay's low  
5 power application. The Adwave Company, I think, is just a, a  
6 point of reference here, but these bills clearly are marked  
7 Raystay Company bills and they were sent to Raystay and they  
8 involve Raystay Company work.

9 Q Well, they also were marked A-2-1-A which -- and the  
10 A standing for Adwave? Correct?

11 A Yes.

12 Q And Adwave paid the bills, didn't it?

13 A Well, as we see a check here from Adwave, yes.

14 Q Well, you included 100 percent of the fees from the  
15 April 4th invoice when you calculated the legal fees reflected  
16 in your November 7, 1991 letter, didn't you?

17 A Yes, because that was Raystay work.

18 Q And if you had excluded that amount from your letter  
19 of November 7th then you wouldn't have arrived at the figure  
20 of over \$15,000 specified in that letter for legal fees?  
21 Isn't that right?

22 A Well, it would have been a different figure  
23 certainly.

24 Q And it also would have -- excluding those fees would  
25 have reduced the amount of money that Raystay could have

1 received for the sale of all five construction permits?

2 Correct?

3 A Well, it would reduce the amount of the legal fees,  
4 yeah.

5 Q Which would have reduced the overall amount that  
6 Raystay could receive for the sale of the five construction  
7 permits? Correct?

8 A Well, it depends what amount they were going to  
9 receive for the five construction permits.

10 JUDGE CHACHKIN: What's your premise here? Are you  
11 saying that Raystay -- this wasn't Raystay work or what  
12 because Adwave paid the check? I mean, do you have any  
13 evidence that, that this was work that had nothing to do with  
14 Raystay or where are we going with this?

15 MR. HOLT: Your Honor, I think --

16 MR. COHEN: We're dealing with all kinds of  
17 speculation. If this, in fact, was Raystay work then it was  
18 properly included. If you have any evidence to the contrary  
19 then I'd like to hear it or otherwise why are we asking all  
20 these questions? Are we going to get at findings which say  
21 this was not Raystay work --

22 MR. HOLT: Your Honor --

23 JUDGE CHACHKIN: -- which shouldn't be included? If  
24 you have some evidence to support that theory it's time to put  
25 up.



1 MR. HOLT: Well, Your Honor, Your Honor, I  
2 understand your point and I'll -- I have no further questions  
3 on that point, so I --

4 JUDGE CHACHKIN: I'm not going to strike it all  
5 unless you have some evidence that supports some kind of  
6 theory that somehow this \$4,000 was done for Adwave which had  
7 nothing to do with Raystay.

8 MR. HOLT: Well, Your Honor --

9 JUDGE CHACHKIN: I'm not going to allow you to make  
10 findings on something in which you're coming up with some  
11 supposition unless you have some evidence supporting it.

12 MR. HOLT: My point is this, that during the course  
13 -- that the fees reflected in the Red Lion expense  
14 certification were fees that were allegedly paid by Raystay in  
15 connection with placing the stations into operation, by  
16 Raystay. The facts that I believe I have established on the  
17 record show that they were actually paid by Adwave and at the  
18 time that Mr. Berfield prepared his November 7th letter he had  
19 the ability, both from referring to the reference Re: Adwave  
20 Company, as well as the notation in the upper right-hand  
21 corner, to determine that those fees had been paid by Adwave.

22 JUDGE CHACHKIN: Well, what difference does it make  
23 if they were paid by Adwave? That was a Gardner's company.

24 MR. HOLT: But it was a completely separate and  
25 distinct company, Your Honor

1 JUDGE CHACHKIN: Well, what difference does it make  
2 if he wants to use one of their checks to pay the bill? As  
3 long as the bill was performed in connection with Raystay I  
4 don't care who paid it.

5 MR. HOLT: Well, Your Honor --

6 JUDGE CHACHKIN: I don't care which company he used  
7 to pay the, to pay the bill with. If the work was performed  
8 on behalf of Raystay then it was a legitimate expense and it  
9 was entitled to be included. Now, if you have any evidence to  
10 indicate that the work was not performed on behalf of Raystay  
11 then produce it. Otherwise, we're wasting time.

12 MR. HOLT: Your Honor, Trinity's position would be  
13 that if the expenses were paid by another company in which  
14 this -- of which Adwave was, that those expenses could not  
15 have been properly included in the expenses for which Raystay  
16 was seeking reimbursement.

17 JUDGE CHACHKIN: Even though Mr. Gardner owned both?

18 MR. HOLT: Correct, Your Honor. They're completely  
19 separate --

20 JUDGE CHACHKIN: What evidence do you have of that?

21 MR. HOLT: -- completely separate and distinct  
22 companies, Your Honor.

23 JUDGE CHACHKIN: Just because he wrote a check using  
24 his -- a different company to write the check with somehow  
25 makes it -- it's the same man. It's the same business he has.

1 MR. HOLT: Well, I would also suggest, Your Honor,  
2 that the fact that the invoices were directed to Adwave or  
3 made a reference to Adwave and were noted by Cohen & Berfield  
4 by -- as shown by the designation in the upper right-hand  
5 corner, that they were considered by Cohen & Berfield as  
6 Adwave Expenses at the time that the services were rendered,  
7 which also would cause them to be excluded from the --

8 JUDGE CHACHKIN: Well, that's not what Mr. Berfield  
9 testified to. He testified these were expenses for work  
10 performed on behalf of Raystay. Now, the fact that the check  
11 was written by Adwave for Raystay's expenses when you have the  
12 same individual owning both companies escapes me as that --  
13 the basis of an argument to say that you can't claim these  
14 expenses.

15 MR. HOLT: Well, Your Honor --

16 JUDGE CHACHKIN: He could have the check written by  
17 anybody. He could have had his wife write the check. What  
18 difference does that make? Does that mean that they can't  
19 claim the expenses? It was still his money, his expenses. He  
20 could use any conduit he wants to pay the expenses.

21 MR. HOLT: Your Honor, it would be Trinity's  
22 position that if the expenses --

23 JUDGE CHACHKIN: Well, do you have any legal basis  
24 for that? Have you got any cases which support this theory or  
25 are we wasting time? I'm not interested in every theory that

1 | you possibly may have concocted. If there's a legal basis for  
2 | the argument I want to hear it and I want to see a case that  
3 | supports it. Otherwise, I'm not going to -- I'm not  
4 | interested in it.

5 |           MR. HOLT: Well, Your Honor, I believe in the  
6 | integrated case the Commission disallowed expenses that had  
7 | been charged to the entity that was being sold by the parent  
8 | company for services that were rendered by the parent company  
9 | because they said that those expenses were not incurred by the  
10 | company that was dismissing its application and was seeking  
11 | reimbursement of its expenses.

12 |           JUDGE CHACHKIN: But these are not services rendered  
13 | by any parent company. These are services rendered on behalf  
14 | of Raystay. We're dealing with who paid the check, what check  
15 | was used. That's nothing to do with integrated.

16 |           MR. HOLT: Your Honor, Trinity would make the  
17 | argument that --

18 |           JUDGE CHACHKIN: Well, do you, do you have any case?  
19 | Integrated doesn't support that theory.

20 |           MR. HOLT: At this time I don't have a case that  
21 | directly supports --

22 |           JUDGE CHACHKIN: Well, then why are we wasting time?

23 |           MR. HOLT: I would argue, Your Honor --

24 |           JUDGE CHACHKIN: You can argue whatever you want,  
25 | but if you don't have any legal basis for it I'm not

1 interested in your arguments or your theories. We're dealing  
2 with the case here and it's a rather simple case as far as I  
3 can see. I don't know why we're spending all this time with  
4 these invoices and the rest, frankly. We're dealing with  
5 whether the allocation was proper. That's the basis of the  
6 issue here and I don't want to make this into something that  
7 it's not.

8 MR. HOLT: And it also, Your Honor, goes to the  
9 question of what Mr. Berfield was thinking at the time that  
10 the services were rendered.

11 JUDGE CHACHKIN: It certainly goes -- I agree with  
12 you that -- even assuming that he was mistaken in making the  
13 allocation, the question is was there intentional deception of  
14 the Commission. That's the basic issue.

15 MR. HOLT: Yes, Your Honor.

16 JUDGE CHACHKIN: But first we have to deal with the  
17 question of whether it was even improper, the allocation  
18 itself.

19 MR. HOLT: And we'd like to argue that these  
20 documents can allow us to draw an inference as to whether or  
21 not there was an intent to perhaps inflate the fees that were  
22 being claimed in the Red Lion expense certification.

23 JUDGE CHACHKIN: You never made any argument in  
24 asking for the issue that these were inflated. You had all  
25 the material. All you argued was that the allocation was

1 improper. Now all of a sudden you're saying that the amounts  
2 of the lawyer -- legal fees were inflated? I mean, where's  
3 the basis for that?

4 MR. HOLT: Well, Your Honor, during discovery in  
5 this proceeding these documents were provided for the first  
6 time.

7 JUDGE CHACHKIN: But where does it show -- what  
8 basis do you have that they were inflated? What do you mean,  
9 that he charged too much or they charged too much for the  
10 hourly price? What is this inflation you're talking about?

11 MR. HOLT: Your Honor, I think the documents tend to  
12 support an inference that the fees that were paid by a non-  
13 Raystay company were included in Raystay expenses and the  
14 inference can be made that --

15 JUDGE CHACHKIN: Well, wait a minute. You haven't  
16 -- all you have is a check showing who paid, who paid the  
17 amount to the lawyer. You have no evidence whatsoever  
18 apparently -- maybe you will before the end of this case, but  
19 so far you don't have anything -- showing that the work was  
20 performed on behalf of Adwave which had nothing to do with  
21 Raystay.

22 MR. HOLT: Your Honor --

23 JUDGE CHACHKIN: I mean, the fact that Adwave paid  
24 the check doesn't mean that it wasn't work performed on behalf  
25 of Raystay.

1 MR. HOLT: Your Honor, again, the invoices  
2 themselves make reference to the Adwave Company and do bear a  
3 notation showing that they were assigned to a client file --

4 JUDGE CHACHKIN: The question is -- the key question  
5 is who was the work performed on behalf of? I'm not  
6 interested in who paid it.

7 MR. HOLT: If I could continue with my questions of  
8 Mr. Berfield along this line, perhaps I can develop it  
9 further.

10 JUDGE CHACHKIN: Go ahead. You've asked Mr.  
11 Berfield the first questions.

12 BY MR. HOLT:

13 Q Mr. Berfield, I'd like to direct your attention to  
14 the reference to Adwave Company and I'd like to ask you --

15 A On what page, sir?

16 Q Oh, I'm sorry. On either of the documents, April  
17 4th or, or the May 1st invoice.

18 MR. BECHTEL: I'm sorry, counsel. I'm lost. Which  
19 exhibit?

20 MR. HOLT: Page 17 of TBF -- of Glendale Exhibit 224  
21 or that was the April 4, 1990 invoice and the May 1, 1990  
22 invoice is found at page 4 of TBF Exhibit 292.

23 BY MR. HOLT:

24 Q Do you have those before you, Mr. Berfield?

25 A I have the April 4, 1990 in front of me, yes, sir.

1           Q     Now, isn't it a fact that the designation Re: Adwave  
2 Company was included on those documents in order to signify to  
3 Mr. Gardner that they work -- at least a portion of the work  
4 being performed related to that company in connection with  
5 cleaning up what were -- in connection with matters that had  
6 arisen during the RKO proceeding?

7           A     I don't think so.

8           Q     Do you have any knowledge or understanding as to why  
9 that designation was placed on the face of those documents?

10          A     I think it was just to job Mr. Gardner's memory or  
11 his analysis when he came to approve the bill. The Adwave  
12 case was over, Mr. Holt. The Adwave case was over. The  
13 Commission had said that if Mr. Gardner was going to get  
14 granted any additional applications he had to make a certain  
15 showing and he had to make a showing of good character. The  
16 Adwave case was over. It had been settled. We still had the  
17 low power applications and we had the Adwave requirement that  
18 we make a showing, and the -- all the services here were to  
19 make that showing so that the low power permits of Raystay  
20 could be granted, and the work was for Raystay.

21 (TAPE 4)

22          Q     I'd like to discuss now how you arrived at the  
23 figures set forth in the expense certification next to the  
24 entry for Mr. Hoover's engineering fees. Your testimony is  
25 that you considered the various frequency studies that Mr.



1 Hoover had performed when you made your three way allocation?

2 Is that right?

3 A Correct.

4 Q I'd like to direct you to paragraph 22 of your  
5 testimony. It's on page 11.

6 A Yes, sir.

7 Q Forgive me for a moment. I seem to have lost my  
8 place. Forgive me for the delay. I'm looking for a portion  
9 of the testimony where you indicate that at the time you made  
10 your allocation of Mr. Hoover's fees you assumed that the  
11 engineering figure that had been given to you by David Gardner  
12 included a flat fee that Mr. Hoover had charged for his  
13 allocation studies. Do you recall providing that testimony?

14 A Yes, sir.

15 Q Do you have a specific recollection now of  
16 considering Mr. Hoover's fees in the channel studies at the  
17 time you made your allocation?

18 A Well, at the time I made my allocation I had the  
19 figure of \$7,275 given to me on the phone by Mr. Gardner and I  
20 had recalled that when we started out on this project that Mr.  
21 Hoover had charged an initial frequency search fee per site,  
22 fixed fee per site, and I think I assumed that that fixed fee,  
23 yes, was in the \$7,275. We later discovered that it was in  
24 addition to the \$7,275.

25 Q And you didn't --